1463.

# SUPREME COURT OF THE UNITED STATES.

## No. 112.

HUGH ROSS, ADMINISTRATOR OF HIRAM PRATT, DECEASED, APPELLANT,

vs.

WILLIAM PRENTISS, MARSHAL, &c.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF ILLINOIS.

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J. & G. S. GIDEON, printers.

Pleas before the honorable the judges of the circuit court of the United States for the district of Illinois, at the June term of said court, and on the nineteenth day of said term, in the year of our Lord one thousand eight hundred and forty-three, and of our independence the 67th year.

Present: Hon. John McLean, presiding judge.
" Nathaniel, Pope, judge.

HUGH ROSS, administrator of Hiram Pratt, deceased,
vs.
WILLIAM PRENTISS, marshal of the district of Illinois.
} In chancery.

This day, to wit, the thirteenth day of September, in the year of our Lord one thousand eight hundred and forty-two, came the complainant, by J. Young Scammon, his solicitor, into the clerk's office of said court, and filed his bill of complaint against the said defendant, which is as follows, to wit:

Hugh Ross, of the city of Chicago, in the county of Cook, and State of Illinois, an alien at the time of the commencement of this suit, who has never been naturalized under the laws of the United States, so as to become a citizen thereof, and a subject of Victoria, Queen of the United Kingdom of Great Britain and Ireland, administrator of the estate of Hiram Pratt, deceased, brings this his bill against William Prentiss, of Springfield, marshal of the United States for the district of Illinois, and a citizen of the State of Illinois. And thereupon your orator complains and says, that Hiram Pratt, late a citizen of the county of Erie, and State of New York, died intestate on or about the tenth day of August, A. D. 1840, leaving, at the time of his decease, personal property within this State, and that your orator was, on the tenth day of April, in the year one thousand eight hundred and forty-one, duly appointed, according to law, by the honorable Mahlon D. Ogden, probate justice of the peace of the county of Cook aforesaid, administrator of all and singular the goods and chattels, rights and credits, which were of the said Hiram Pratt at the time of his decease, with full powers and authority to secure and collect the said property and debts wheresoever the same might be found in this State, as by reference to the letters of administration on the estate of the said Hiram Pratt, deceased, granted to your orator, as aforesaid, filed and recorded in the office of the said probate justice of the peace, fully and particularly appears.

And your orator further shews, that one Gurden S. Hubbard, in the lifetime of the said Hiram Pratt, deceased, being indebted to the said Hiram Pratt in a large sum of money, amounting to the sum of twelve thousand and seventy-five dollars and thirty-nine cents, in order to secure the payment thereof, according to the tenor and effect of ten certain pro-

missory notes, given by the said Gurden S. Hubbard to the said Hiram Pratt for the payment thereof, by instalments, did, on the twenty-ninth day of August, in the year one thousand eight hundred and thirty-eight, execute and deliver, in due form of law, to the said Hiram Pratt, a certain indenture of mortgage of all of the following described tract, piece or parcel of land, to wit: Lot number one, (1,) in block number five, (5,) in Kinzie's addition to the town of Chicago, with the brick dwelling-house and other buildings thereon situated, the said premises being situate and lying in the city of Chicago, in the county of Cook, and State of Illinois aforesaid, and being the same that were purchased by the said party of the first part, (the said Gurden S. Hubbard,) of one Gholson Kercheval.

And your orator further shews, that the said indenture of mortgage was duly acknowledged by the said Gurden S. Hubbard, and was duly recorded in the office of the recorder of Cook county aforesaid, on the third day of September in the same year, as by reference to the said indenture of mortgage, or to the record thereof, more fully and at large appears, and to which reference is hereby prayed.

And your orator further shews, that some of the promissory notes aforesaid, for which the said indenture of mortgage was given to secure, have become due and payable, according to the tenor and effect thereof, and that the same, as well as the interest moneys which have accrued due thereon, have remained wholly unpaid; by means whereof the said indenture of mortgage, and the estate thereby mortgaged, have become absolute in the said Hiram Pratt, his executors, or administrators; and your orator, as administrator as aforesaid, hath lately, that is to say, on the fifteenth day of January now last past, filed his bill of complaint in this honorable court to foreclose the said indenture of mortgage, which said bill, and the proceedings thereupon in this court are still pending, as by reference thereto fully and at large appears.

And your orator further shews, that at the time of the execution and delivery of the said indenture of mortgage to the said Hiram Pratt, as aforesaid, the said Gurden S. Hubbard, the mortgagee, as aforesaid, was the owner and actual occupant of the said mortgaged premises, by virtue of a purchase of the same from the said Gholson Kercheval, made in the month of April, in the year eighteen hundred and thirty-six; that, at that time, that is to say, in the said month of April, in the year of our Lord one thousand eight hundred and thirty-six, the said Gurden S. Hubbard actually purchased the premises in the said indenture of mortgage mentioned from the said Gholson Kercheval, for the sum of ten thousand dollars, of which the sum of five thousand dollars was then, in said month of April in said year, actually paid in cash by him to the said Gholson Kercheval, and the residue of said purchase money was paid during the said year; that immediately on said purchase being made, that is to say, in the said last mentioned month, or about that time, the said Gurden S. Hubbard took possession of the said premises in said indenture of mortgage mentioned, and occupied the same as a residence for himself and his family, and lived and resided in the dwelling house, and occupied the

whole of the lot in said mortgage mentioned, whereon the said dwelling house is built, as the residence of himself and his family, from the said month of April, in said year one thousand eight hundred and thirty-six, until some time in the year one thousand eight hundred and thirty-nine, as the complainant can ascertain; and that ever since the said month of April, in said year one thousand eight hundred and thirty-six, the said mortgaged premises have been in the actual and exclusive occupation of the said Gurdon S. Hubbard, or tenants under him, until in or about the month of April, in the year eighteen hundred and forty-one, when the possession of the same was taken by your orator under the said mortgage; since which last mentioned time until the present time, the same have been in the possession of your orator as the administrator of said Pratt, or of tenants under him

And you orator further shews that, although the said premises in the said indenture of mortgage mentioned were purchased as aforesaid by the said Hubbard from the said Kercheval in the month of April, in the year eighteen hundred and thirty-six, at which time the sum of five thousand dollars, part of the consideration money, was paid as aforesaid therefor to the said Kercheval, yet the title to the said premises remained in the said Gholson Kercheval until in or about the twenty-fifth day of September, in the year of our Lord one thousand eight hundred and thirty-seven, when the said Gholson Kercheval, at the request of the said Gurden S. Hubbard, having received payment in full for the residue of said purchase money, by deed bearing that date, executed by the said Gholson Kercheval and his wife, conveyed the said premises to one Daniel Griswold, for the use and benefit of said Hubbard; and that the said Daniel S. Griswold afterwards, by deed executed by himself and wife, dated the first day of November, in the year one thousand eight hundred and thirty-eight, conveyed the said premises to the said Gurden S. Hubbard, both of which said last mentioned deeds are recorded in the recorder's office of Cook county aforesaid, on the twentieth day of April, in the year one thousand eight hundred and thirty-nine; and that the said Gholson Kercheval also, for the further security of the title to the said Gurden S. Hubbard, on the third day of April, in the year of our Lord one thousand eight hundred and thirty-nine, together with his wife, executed a deed of the same premises to the said Hubbard, dated the said last mentioned day, and recorded in the same office on the eleventh day of April, in the same year, as by reference to the said deeds, or to the records thereof, more fully and at large appears, and to which your orator prays leave to refer.

And your orator further shews, that on the sixth day of June, in the year one thousand eight hundred and thirty-eight, after the execution and delivery, but before the recording, of the said deed from the said Gholson Kercheval to the said Daniel S. Griswold, and while the said Gurden S. Hubbard was in the exclusive possession and actual occupation of said premises, as the vendee thereof from the said Kercheval, as aforesaid, the United States of America recovered a judgment in the district court of the United States for the district of Illinois, against one John

S. C. Hogan and Gholson Kercheval, as his surety, for the sum of six hundred dollars damages, and thirty-five 25-100 dollars costs, as by reference to the said judgment on the records of the said court fully appears.

And your orator further shews, that the said United States of America, by their attorney for this district, have lately caused an execution to be issued upon the said judgments out of the said court, tested on the twenty-first day of June, eighteen hundred and forty-two, directed to William Prentiss, the marshal of said district to execute; by virtue of which said execution the said marshal, by his deputy marshal Edward B. Talcott, hath lately levied upon the said lot of land and premises so conveyed as aforesaid by way of mortgage to the said Hiram Pratt by the said Gurden S. Hubbard, and so purchased as aforesaid, paid for, and actually occupied by the said Gurden S. Hubbard in the month of April, in the year one thousand eight hundred and thirty-six, before the rendition of the said judgment, and being in the actual occupation, by virtue of such purchase of the said Gurden S. Hubbard, at the time of, and long prior to, the rendition of said judgment, claiming that the said lot of land and premises are liable to be sold by virtue of said execution against the said Gholson Kercheval, and that the said judgment was a lien thereupon at the time of its rendition, and has advertised the same for sale, and threatens to sell the same under said execution.

And your orator further saith, that the fact of the purchase and actual occupancy and residence of the said Gurden S. Hubbard in the said lot of land and premises, at and before the rendition of said judgment, was well known at that time to the then attorney of the United States by whom the said judgment was obtained on their behalf, and was also at that time, and is now, well known to the present attorney of the United States, at whose instance the said execution on said judgment has been issued.

And your orator further saith, that he is now in danger of losing the benefit of said mortgage, by the sale of said mortgaged premises under said judgment; whereas your orator insists that the said land and premises ought not to be sold under the said execution issued upon said judgment, and that the said United States, and their attorneys, had notice in manner aforesaid, of the equitable and legal rights of the said Gurden S. Hubbard, and your orator's intestate, as the vendee and mortgagee of said land and premises from the said Gholson Kercheval, at the time of the rendition of said judgment, and subsequently thereto, to the present time.

In tender consideration whereof, and for as much as your orator can only obtain relief in this honorable court, where matters of this kind are properly cognisable and relievable, your orator prays that said marshal, and all and every his deputies and agents, may be enjoined from selling the said lot of land and premises above described, upon or by virtue of the said execution so issued as aforesaid, and upon or by virtue of any future execution that shall or may be issued upon the said judgment. And that your orator may have such further or other relief as the nature

of the case may require and shall be agreeable to equity. To the end, therefore, that the said William Prentiss, marshal as aforesaid, to whom the said writ of execution has been issued and directed, defendant in this bill may, if he can, show why your orator should not have the relief hereby prayed, and may upon his corporal oath, and according to the best and utmost of his knowledge, remembrance, and information, and belief, true, full, direct, and perfect answer make to all and singular the matters aforesaid, and to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they are respectively required to answer, that is to say:

1st. Whether said Gurden S. Hubbard did not make said purchase, and pay said purchase money at the time as charged in this bill, and take possession of said premises, and continue in the exclusive possession thereof, up to, and at the time of, the rendition of said judgment.

2d. Whether said Kercheval and wife did not make said conveyance to said Griswold at the time and for the purposes stated in this bill; and whether said Griswold did not likewise convey said premises to said Hubbard.

3d. Whether said Hubbard did not execute and deliver said indenture of mortgage to your orator's intestate, the said Hiram Pratt, in his lifetime; and whether your orator, as his representative, is not now in the possession of said premises under said mortgage.

4th. Whether said deeds and mortgage were not duly recorded as charged in this bill; and whether said United States had not notice, at the time of the rendition of said judgment, of the said equitable and legal rights of said Hubbard, and your orator's intestate under said mortgage.

5th. Whether said defendant has not levied said execution upon said lot; and whether he does not threaten to sell the same under said execution.

May it please the court to grant to your orator the people's writ of subpœna, issuing out of and under the seal of this honorable court, requiring the said William Prentiss, marshal as aforesaid, under a certain penalty to be therein stated, to appear and answer the premises, and to stand to and abide by such order and decree in the premises as may be made by this honorable court, and as may be agreeable to equity and good conscience.

And your orator will ever pray, &c.

HUGH ROSS,
*Administrator, &c.*
J. YOUNG SCAMMON,
*Solicitor for compl't and counsel.*

The defendant, William Prentiss, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5.

J. Young Scammon, the solicitor of the said complainant, doth solemnly, sincerely, and truly declare and affirm, that the matters and things in the foregoing bill of complaint stated are mainly within his

personal knowledge; and that he was cognizant of the said facts at the times they took place respectively, and that such of the said matters and things as are not of his personal knowledge, he is informed and verily believes, are true in substance and in fact; and this he does under the pains and penalties of perjury. J. YOUNG SCAMMON.

Duly affirmed to before me, this 13th day of September, 1842.

NATH'L POPE.

The following is a copy of the endorsement on said bill, to wit:

"The clerk will issue a writ enjoining the marshal against proceeding to sell the property specified in this bill until the further order of the court, upon a bond's being executed to said marshal, in the penalty of 200 dollars, to pay all costs and damages.

NATH. POPE, *District judge.*

*Sept.* 13, 1842."

Which said bond was filed in the office of the clerk of said court on the thirteenth day of September, in the year of our Lord one thousand eight hundred and forty-two, and is as follows, to wit:

*Bond.*

Know all men by these presents, that I, J. Young Scammon, am held and firmly bound unto William Prentiss, marshal of the district of Illinois, in the penal sum of two hundred dollars, lawful money of the United States, to be paid to the said William Prentiss, marshal, &c., his successor or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal, and dated the thirteenth day of September, in the year of our Lord one thousand eight hundred and forty-two.

The condition of this obligation is such, that whereas Hugh Ross, administrator of the estate of Hiram Pratt, deceased, has exhibited his certain bill of complaint in the circuit court of the United States, for the district of Illinois, on the chancery side thereof, against the said William Prentiss, marshal as aforesaid, praying, among other things, that the said William Prentiss, marshal as aforesaid, may be enjoined from selling lot number one, in block number five, in Kinzie's addition to the town of Chicago, under and by virtue of a certain execution issued from said court in favor of the United States of America, and against John S. C. Hogan and Gholson Kercheval. And whereas, the judge of said court has made an order that the injunction prayed for shall be issued upon the bond's being executed to said marshal, in the penal sum of two hundred dallars, to pay all costs and damages, &c.

Now, therefore, if the said Hugh Ross, administrator as aforesaid, shall well and truly pay all damages and costs, that the said William Prentiss, marshal aforesaid, or the United States of America, may sustain by reason of the wrongful issuing of said injunction, then the above obligation to be void; otherwise to remain in full force and virtue.

J. YOUNG SCAMMON. [L. S.]

I approve the above bond.

WM. PRENTISS, *Marshal.*

And thereupon, the following writ of injunction issued, to wit:

*Writ.*

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
*District of Illinois, ss:*

The United States of America to William Prentiss, marshal of the district of Illinois, his deputies and agents, greeting:

Whereas, it has been represented unto us in our circuit court of the United States, for the district of Illinois, in chancery sitting, on the part of Hugh Ross, administrator of the estate of Hiram Pratt, deceased, complainant, that he has lately exhibited his bill of complaint in our said court, before the judges thereof, against you, the said William Prentiss, marshal as aforesaid, to be released touching the matters therein complained of; in which bill it is stated, among other things, that you have levied an execution in favor of the United States against John S. C. Hogan and Gholson Kercheval for the sum of six hundred dollars damages, besides costs of suit, which issued from said circuit court upon lot number one, (1,) in block number five, (5,) in Kinzie's addition to Chicago, and that you have advertised the same for sale, and threaten to sell the same under said execution, to the great wrong and injury of said complainant in the premises. We, therefore, in consideration thereof, and of the particular matters in the said bill set forth, do strictly command you, the said William Prentiss, and the persons before mentioned, and each and every of you, under the penalty of what shall fall thereon, that you do absolutely desist and refrain from all further proceedings in said execution against said lot of land, and from proceeding to sell the same under said execution until the further order of our said court.

Witness the hon. Roger B. Taney, chief justice of the United States of America, at Springfield aforesaid, this thirteenth day of [L. S.] September, in the year of our Lord one thousand eight hundred and forty-two, and of our independence the sixty-seventh year.

JAMES F. OWINGS, *Clerk.*

Which said writ of injunction was endorsed with the following return, to wit: "I acknowledge due service of the within writ by reading the same, and receiving a copy thereof, this 14th day of September, 1842.

WM. PRENTISS, *U. S. Marshal.*
EDW'D B. TALCOTT, *Deputy.*

This day, to wit, the seventh day of June, in the year of our Lord one thousand eight hundred and forty-three, came the defendant, by his attorney, and filed his answer to the complainant's bill, in the words and figures following, to wit:

In the circuit court of the United States for the district of Illinois.—In chancery.

*Answer.*

The answer of William Prentiss, defendant, to the bill of complaint filed against him by Hugh Ross, administrator of the estate of Hiram Pratt, deceased.

This defendant, William Prentiss, now, and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the manifold errors and insufficiencies in the said complainant's bill of complaint contained, for answer thereunto, and unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says:

In answer to the first interrogatory in the said bill of complaint, he says, that he is entirely ignorant of, and has no knowledge or information, whether the said Gurden S. Hubbard did make the said purchase of the said lot of land, and pay the said purchase money at the times as charged in the said bill; nor whether the said Gurden S. Hubbard took possession of the said premises, and continued in the possession of the same up to and at the time of the rendition of the said judgment; this defendant denies all knowledge or information as to any of the facts mentioned in the said first interrogatory, and cannot admit the same. And in answer to the second interrogatory, this defendant saith, that he has no knowledge or information whether the said Kercheval and wife did make the conveyance to the said Griswold, at the time and for the purpose stated in the said bill of complaint; nor whether the said Griswold did likewise convey the said premises to the said Hubbard; this defendant has no knowledge as to any of the matters and things enquired of in the said second interrogatory, except as derived from the said bill of complaint, and cannot admit the same.

In answer to the third interrogatory, this defendant saith, that he has no knowledge or information in relation to any of the matters and things inquired of by this interrogatory, except as derived from the said bill of complaint, and cannot admit the same.

In answer to so much of the fourth interrogatory, as inquires whether the deeds and mortgages were not duly recorded as charged in said bill, this defendant answering saith, that he has no knowledge or information except as derived from the said bill; and in answer to so much of the said interrogatory as inquires whether the United States had not notice, at the time of the rendition of the said judgment, of the equitable and legal rights of the said Hubbard, and the complainant's intestate under the said mortgage, this defendant saith, that he is entirely ignorant of, and has no knowledge or information upon, the said subject, and, therefore, denies that the United States, at the time of the rendition of said judgment, had any notice of any legal or equitable rights of the said Hubbard, and of the complainant's intestate under the said mortgage.

In answer to the fifth interrogatory, this defendant saith, that he admits that, as marshal of the district of Illinois, he did, by his deputy,

Edward B. Talcott, levy the said execution, in the said bill mentioned, upon the said lot of land, and did intend to sell the same under the said execution, and still does intend to sell the same, unless restrained by this honorable court.

And this defendant further answering saith, that on or about the 28th day of Nov'r, 1832, John S. C. Hogan, who was appointed postmaster at Chicago, in the county of Cook, and State of Illinois, executed and delivered to the Postmaster General, with Thomas J. V. Owen, and the said Gholson Kercheval, his sureties, a bond, bearing date the day and year last aforesaid, in the penal sum of six hundred dollars, conditioned, among other things, that the said John S. C. Hogan should well and truly execute the duties of said office, and faithfully, once in three months, and oftener if thereto required, render accounts of his receipts and expenditures as postmaster, to the General Post Office, in the manner and form prescribed by the Postmaster General in his several instructions to the postmasters, and would pay all moneys that should come to his hands, for the postage of whatever was by law chargeable with postage, to the Postmaster General of the United States for the time being, deducting only the commission allowances made by law, for his care, trouble, and charges in managing said office, as by reference to the proof of the said bond, and the loss of the same by fire, a copy whereof is hereunto annexed, will more fully and at large appear.

And this defendant further answering saith, that on the first day of April, in the year 1836, and before, and at the time of the pretended purchase of the said lot of land by the said Hubbard from the said Kercheval, the said John S. C. Hogan, as postmaster as aforesaid, as principal, and the said Gholson Kercheval, as surety, were, and ever since have been, and still are, indebted to the United States of America, upon said bond, in a large sum of money, to wit, the sum of $2,357 51, for moneys which, before that time, came to the hands of the said Hogan, as postmaster as aforesaid, for the postage of things chargeable by law with postage, as by reference to the account of the said Hogan, certified by the auditor of the Post Office Department, a copy whereof is hereunto annexed, will more fully and at large appear.

And this defendant further answering saith, that the said judgment, in the said bill of complaint mentioned, recovered by the United States of America against the said Hogan and Kercheval, on the 6th day of June, 1838, was recovered in a suit upon the said bond, for a part and parcel of the said account, so due from the said Hogan, as postmaster as aforesaid, to the said plaintiffs, as by reference to the said judgment and the records thereof, remaining in said court, will more fully appear.

And this defendant further answering saith, that before and at the time of the said pretended purchase of the said premises, by the said Hubbard, from the said Kercheval, and the execution of said mortgage, the plaintiffs were, and ever since have been, and still are, bona fide creditors of the said Kercheval, for the amount for which the said judgment was recovered against him as aforesaid.

And this defendant further answering saith, that at the time of the ren-

dition of the said judgment, and at the time it became a lien upon the said land, the legal title of the said land remained in the said Kercheval, as this defendant is informed and believes.

And this defendant further answering saith, that by an act of the legislature of the State of Illinois, approved February 16, 1827, it is declared, that no action shall be brought, whereby to charge any person upon any contract for the sale of lands, tenements, and hereditaments, unless the promise or agreement, upon which such action shall be brought, or some note or memorandum thereof shall be in writing, and signed by the party to be charged therewith, &c. And by an act of said legislature, approved Jan'y 31st, 1827, it is provided, that all grants, bargains, sales, contracts, and agreements, of or concerning any lands, &c., and whereby the same may be affected in law or equity, shall be recorded in the recorder's office in the county where the lands, &c., are lying and being, within twelve months after the execution of any such writings. And by an act of the legislature of the State of Illinois, approved January 18, 1833, it is provided, that from and after the first day of August next, (then next meaning,) all deeds, and the title papers which are required to be recorded, shall take effect and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers without notice; and all such deeds and title papers shall be adjudged void, as to all such creditors and subsequent purchasers, without notice, until the same shall be filed for record in the county where the lands may lie.

And this defendant further answering saith, that after the rendition of the said judgment in favor of the United States of America against the said Hogan & Kercheval as aforesaid, on or about the 26th day of December, in the year 1838, a writ of fieri facias was duly issued by the clerk of said court, in which the said judgment was rendered as aforesaid upon said judgment in due form of law, was then and there, before the return day thereof, delivered to the marshal of the district of Illinois aforesaid, to be executed in due form of law; and that the said marshal, afterwards, to wit, on the 20th day of April, 1839, returned the said writ not executed for want of time; that, afterwards, to wit, on or about the 20th day of April, 1839, the said clerk issued an alias fieri facias upon the said judgment in due form of law, which was then and there, before the return day thereof, delivered to the marshal of said district to be executed in due form of law; and the said marshal, afterwards, to wit, on or about the 31st day of August, 1839, returned the said writ "not executed;" that afterwards, to wit, on or about the 21st day of June, 1842, the clerk of the said court issued and delivered to the said Edward B. Talcott, as deputy of this defendant, as marshal of the said district, in due form of law, a writ of fieri facias upon the said judgment, to be executed in due form of law, by virtue of which said writ the said Talcott, deputy of this defendant as aforesaid, afterwards, and during the life of said execution, levied upon the said lot of land and premises, and advertised the same for sale, as in the said bill of complaint mentioned, as by the said writ of execution ready to be pro-

duced, as this court shall direct, will more fully and at large appear. And this defendant is advised and insists that, by the laws of the land, the said lot is subject to be sold under said execution. All which matters and things this defendant is ready to aver, maintain, and prove, as this court shall direct, and prays to be hence dismissed with his costs and charges in that behalf most wrongfully sustained.

J. BUTTERFIELD,
*Sol'r for deft.*

WM. PRENTISS.

Sworn to before me, in open court, this 7th day of June, 1843.

JAMES F. OWINGS, *Clk.*

This day, to wit, the fifteenth day of June, in the year aforesaid, came the complainant aforesaid, by his attorneys, and filed his replication, which is as follows, to wit:

*Replication.*

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

SCAMMON & JUDD,
*Sol'rs for compl't.*

This day, to wit, the same day and year last aforesaid, came the parties by their respective attorneys, and filed the following stipulation, to wit:

*Stipulation.*

It is hereby stipulated and agreed, by the counsel for the respective parties, to admit, upon the hearing of this cause, that the judgment in favor of the United States against the said John S. C. Hogan and Gholson Kercheval, mentioned in the said bill of complaint, and in the answer of the defendant, was obtained on the 6th day of June, 1838, in the district court of the United States for the district of Illinois, upon the bond and certified copy of the post office account of the said John S. C. Hogan to the said answer of the said defendant annexed; and that executions were issued upon the said judgment as in the said answer stated and set forth.

J. Y. SCAMMON, *Sol'r for compl't.*
J. BUTTERFIELD, *Sol'r for deft.*

This day, to wit, the same day and year aforesaid, came the parties aforesaid, by their respective attorneys, and filed the following stipulation, to wit:

*Stipulation.*

It is hereby agreed, between the parties to the above entitled suit, that the papers, marked from one to eight inclusive, shall be received as evidence in this case; and that the respective things therein shall be received upon the hearing of this cause, viz:

1st. The affidavit of Kercheval, proving sale and delivery of possession, bond, and so forth.

2nd. Aff't of Greenwood proving same facts.

3d. Aff't of Scammon proving possession.

4th. Deed from Kercheval to Griswold.

5th. Agreement under which deed to Griswold was executed, and affidavit of Ogden.

6th. Deed from Kercheval to Hubbard.

7th. Deed from Griswold to Hubbard.

8th. Mortgage from Hubbard to Pratt.

SCAMMON & JUDD,
*Sol'rs for compl't.*

J. BUTTERFIELD, *for def't.*

The paper referred to in the stipulation above, marked No. 1, and filed in the office of said court, on the fifteenth day of June, in the year one thousand eight hundred and forty-three, is in the words and figures following, to wit:

No. 1.

STATE OF ILLINOIS, *County of Cook, ss.*

Gholson Kercheval being first duly sworn, doth depose and say: that, in the spring of the year 1836, this deponent sold to Gurden S. Hubbard lot one, (1,) in block five, (5,) in Kinzie's addition to Chicago, for the sum of $10,000; and at the date of said sale, said Hubbard paid me, in cash, the sum of five thousand dollars, and agreed to pay me the sum of $2,500, in October, 1836, and the like sum in April, 1837, as near as this deponent can recollect. The two last sums were not paid promptly; and consequently, in the opinion of this deponent, said Hubbard forfeited his right to said lot, but they were subsequently paid some time in the year 1837; and, at the request of said Hubbard, I then executed a deed for said premises to Daniel S. Griswold. Said Hubbard, at the time he requested me to execute the deed to Griswold, represented that he had had, or was going to get, some money from said Griswold, or something like it; and therefore desired me to make the deed to Griswold. The deed to Griswold was executed by myself and wife.

At the time of the purchase, I executed a bond to said Hubbard for the conveyance of said lot to him, upon the payment of the purchase-money. Immediately after the purchase of said property by said Hub-

bard, or as soon thereafter as a house could be finished which had been previously erected upon said lot, and some time in the summer or fall of the year 1836, said Hubbard took exclusive possession of said lot—removed into the said house with his family, and resided in the same with his family until the decease of his wife, which took place in the year 1838 or 1839. That the possession of said lot and house by said Hubbard ever since said sale to him by this deponent, was notorious and exclusive, up to the time of the decease of his wife. This deponent has not since said sale been in the actual possession of said lot or house, or any part thereof. At the time of the execution of the deed aforesaid from me to said Griswold, a note for about one thousand dollars was given by said Hubbard for a part of the consideration money for said lot, payable at four months after the date thereof, which said note was discounted at the branch or State Bank of Illinois, at Chicago. I think this note was not paid by Hubbard at maturity, and I have not heard from it since, and therefore suppose it is paid. The purchase-money of said lot was all paid before the deed was executed to said Griswold, except the said thousand dollar note.

GHO. KERCHEVAL.

Subscribed, sworn this 31st May, 1843.

N. B. JUDD, *Notary Public.*

The paper referred to in the replication last above, and marked No. 2, and filed in the office of said court on the fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-three, is in the words and figures following, to wit:

[No. 2.]

*State of Illinois, county of Cook, ss:*

Theophilus S. Greenwood, being first duly sworn, doth depose and say, that he was a clerk for Gurden S. Hubbard in the years 1836 and 1837, and that, on the tenth day of April, 1836, said Hubbard purchased of Gholson Kercheval lot (1) one, in block five, (5) in Kinzie's addition to Chicago, and paid for it to him in cash, in hand, $5,000, and agreed to pay him $2,500 more on the 10th day of October, 1836, and the like sum on the 10th day of April, 1837, with interest at seven per centum per annum.

At the time of sale said Kercheval executed to said Hubbard a bond for a deed for said premises upon the payment of the balance of the purchase money, which was paid some time in the year 1837.

Soon after said purchase said Hubbard took exclusive possession of said lot, and occupied the same, by himself and family, till the decease of his wife, which occurred some time in the year 1838, when he rented said premises to a tenant; and further this deponent saith not.

THEO'S S. GREENWOOD.

How do you know the whole consideration money was paid in 1837? Please state.

I was knowing to the whole transaction; and there was some delay about obtaining the deed. Mr. Kercheval was not willing to give the deed until the whole money was paid. Finally, a note was given, payable in the bank, for about $1,000, the balance due, and the deed was then executed. Said note was accepted by said Kercheval for the payment of the balance. The reason of my knowing that this was in 1837, is, because it was before the execution of the deed to Griswold.

THEO'S S. GREENWOOD.

Subscribed and sworn this 31st May, 1843.

N. B. JUDD, *Notary Public.*

The paper referred to in the replication last aforesaid, marked No. 3, and filed in the office of the clerk of said court on the fifteenth day of June, A. D. 1843, is in the words and figures following, to wit:

*State of Illinois, county of Cook, ss:*

J. Young Scammon, doth solemnly, sincerely, and truly declare and affirm, that Gurden S. Hubbard took actual and exclusive possession of lot one, (1) in block five, (5) in Kinzie's addition to Chicago, some time in year 1836, and moved into the house erected on the same, with his family, during that year, and resided upon the same, occupying all of said lot, until some time in the year 1838 or '9, when his wife died; that, upon the death of his wife, said Hubbard leased said lot to Justin Butterfield, esq., the present attorney of the United States for the district of Illinois, and, after the expiration of his lease, the said Hubbard leased said lot to S. Lisle Smith, who is the present occupant thereof.

That said Hubbard, by himself and tenants, have been in the actual and exclusive possession of said premises from the year 1836 to the year 1841, when possession of the same was taken (by the complainant, in a bill of chancery filed in the U. S. circuit court for the district of Illinois) by Hugh Ross, administrator of the estate of Hiram Pratt, deceased, under and by virtue of a mortgage from said Hubbard to said Hiram Pratt, deceased, when said Ross leased said premises to S. Lisle Smith, who has, from that time to the present, continued to occupy the same as his tenant.

This affiant further saith, that he is well acquainted with both Gurden S. Hubbard and Gholson Kercheval, and that he was informed, by both of said persons, in the year 1836 or 1837, that said Hubbard had purchased said premises of said Kercheval, and that the fact of such purchase was, in both of said years, notorious in the city of Chicago.

This affiant further saith, that there is upon said lot a fine two-story brick house, which was erected in the year 1836, and which is the same house mentioned in the first part of this affidavit. That there is also an office upon said lot, which was occupied as such by said Hubbard during the year 1837 and 1838, according to the best of the recollection and belief of this affiant. And further this affiant saith not.

J. YOUNG SCAMMON.

Affirmed to, before me, this 31st day of May, 1843.

N. B. JUDD, *Notary Public.*

The paper referred to in the said stipulation last aforesaid, marked No. 4, and filed in the clerk's office of said court on the fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-three, is as follows, to wit:

This indenture, made this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and thirty-seven, between Gholson Kercheval and Felicite, his wife, of the city of Chicago, and State of Illinois, par*tie* of the first part, and Daniel S. Griswold, of Baltimore, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of ten thousand dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, ha*th* granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that certain tract of land, lying in county of Cook, and State of Illinois, known and described as lot one, (1) in block five, (5) in Kinzie's addition to the town of Chicago, in said county of Cook; together with all and singular hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, dower, and rights of dower, claim, or demand whatsoever, of the said parties of the first part, either in law or equity, of, in, and to the above bargained premises, with the hereditaments and appurtenances: To have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, and to his heirs and assigns, to his and their sole and only proper use, benefit, and behoof, forever.

And the said Gholson Kercheval, for himself, his heirs, executors, and administrators, does covenant, grant, bargain, and agree, to and with the said party of the second part, and his heirs and assigns, that, at the time of the ensealing and delivering these presents, he is well seized of the premises above conveyed as of good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same, in manner and form as aforesaid; and that the same are free and clear of all incumbrances, of what kind and nature soever; and that the above bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming, or to claim, the whole, or any part thereof, he will forever warrant and defend.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the year and day first above written.

GHOL. KERCHEVAL, [SEAL.]
F. H. KERCHEVAL. [SEAL.]

Sealed and delivered in presence of—
A. S. PERRY.

*State of Illinois, Cook county:*

On the 20th day of April, 1839, the foregoing deed was left for record and duly recorded in book No. 3, of deeds, page 94.

RICH. J. HAMILTON,
*Rec'r Cook co., Ill.*

(6,730.)

*State of Illinois, Cook county, ss:*

This day personally appeared before the undersigned, a justice of the peace in and for said county, Gholson Kercheval and Felicite, his wife, to me personally known to be the real persons who executed the foregoing deed of conveyance, and who before me acknowledged that they executed the same, freely and voluntarily, for the uses and purposes therein mentioned; and the said Felicite being by me made acquainted with the contents of said deed, and examined separate and apart from her said husband, acknowledged that she executed the same, and releases her dower to the tract of land therein described freely, and without compulsion on the part of her said husband.

Given under my hand and seal this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and thirty-seven.

A. S. PERRY, *J. P.*

The paper referred to in the stipulation last aforesaid, marked No. 5, and filed on the fifteenth day of June, A. D. 1843, is as follows, viz:

Know all men by these presents, that whereas I have this day received a deed in fee simple from Gholson Kercheval and wife for lot number one, in block number five, in Kinzie's addition to the town of Chicago, and county Cook, in the State of Illinois; and whereas I have also loaned to Gurden S. Hubbard, of the said town of Chicago, the sum of ten thousand dollars, at an interest of twelve per cent. per annum, the principal payable in a year, and the interest semi-annually, as will more fully appear by a certain agreement, under seal, between myself and said Gurden S. Hubbard, bearing date the twenty-first day of September, in the year of our Lord one thousand eight hundred and thirty-seven: Now, therefore, this is to certify, that I hold said lot so conveyed to me by Gholson Kercheval, by way of mortgage from said Gurden S. Hubbard, as a part of the security for the payment of the above named sum and interest; and upon the payment of the said sum of ten thousand dollars, according to the terms of said agreement—

I obligate and bind myself to convey to said Gurden S. Hubbard, his heirs and assigns, said lot one, in block five, in Kinzie's addition to the town of Chicago, by deed of a similar character to the one by which the same was conveyed to me, by said Gholson Kercheval.

Given under my hand and seal, this day of September, in the year of our Lord one thousand eight hundred and thirty-seven.

D. S. GRISWOLD.

Witness: W. B. OGDEN.

Received, Chicago, September 27, 1837, of G. S. Hubbard, John H. Kinzies and wife, warrantee deed, to me dated this day, which is also considered as a mortgage, and held as security in the same manner as the one from Gholson Kercheval and wife, and subject to the conditions of the above obligation.

As witness my hand and seal.

D. S. GRISWOLD. [L. S.]

In presence of—

W. B. OGDEN.

STATE OF ILLINOIS, *Cook county, ss:*

William B. Ogden, of the city of Chicago, in the county of Cook, and State of Illinois, being first duly sworn, doth depose and say, that the annexed agreement or instrument in writing, was executed by D. S. Griswold, in my presence, at the time it bears date, and my name was subscribed to the same as a witness at that time; and this deponent further saith, that he knows that Gurden S. Hubbard purchased of Gholson Kercheval, in the year 1836, lot one, (1) in block five, (5) in Kinzie's addition to Chicago, and that he took possession of the same, and resided thereon with his family in said year, and continued to reside thereon, until the decease of the wife of said Hubbard, in the year 1838 or '9.

This deponent further saith, that he knows that said Kercheval conveyed said lot to Daniel S. Griswold, at the request of Gurden S. Hubbard, to secure said Griswold the re-payment of a loan, which said Griswold proposed making to said Hubbard.

This deponent further saith, that the price for the said lot paid by said Hubbard to said Kercheval, was $10,000.

W. B. OGDEN.

Subscribed and sworn, this first day of June, A. D. 1843.

HENRY BROWN, *Notary Public,*
*in and for the city of Chicago.*

The paper referred to in the stipulation last aforesaid, marked No. 6, and filed on the fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-three, is as follows, to wit:

This indenture made this third day of April, in the year of our Lord one thousand eight hundred and thirty-nine, between Gholson Kercheval and Felicite, his wife, of the city of Chicago, in the county of Cook, and State of Illinois, of the first part, and Gurden S. Hubbard of the same place, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one thousand dollars, to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, have remised, released, sold, conveyed, and quit-claimed, and by these presents do remise, release, sell, convey and quit-claim, unto the said party of the second part, his heirs and assigns forever, all the following described lot or parcel of land, situate, lying, and being in the city of Chicago, and known and described as lot number one, (1) in block number five, (5) in Kinzie's addition to the town of Chicago, as the same is laid down and desig-

nated upon the original plat of said addition, the said premises being situate in Cook county in the State of Illinois; to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining; and all the estate, right, title, interest and claim whatever, of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said party of the first part have hereunto set their hands and seals, the day and year first above written.

GHO. KERCHEVAL, [SEAL.]
F. H. KERCHEVAL. [SEAL.]

STATE OF ILLINOIS, *Cook county, ss:*

On this ninth day of April, in the year of our Lord one thousand eight hundred and thirty-nine, personally appeared before the undersigned, clerk of circuit court, within and for the county of Cook aforesaid, Gholson Kercheval and Felicite H. Kercheval, his wife, who are personally known to me to be the real person who executed the foregoing quit-claim deed, and acknowledged that they executed the same freely and voluntarily, for the uses and purposes therein expressed. The said Felicite H. Kercheval, wife of the said Gholson Kercheval, was examined by me, separate and apart from her said husband, and the contents and meaning of said deed were fully explained and made known to her by me, and she acknowledged that she executed the same, and relinquished her dower in the premises therein described, freely and voluntarily, without force or compulsion of her said husband.

Witness my hand and the seal of said court at Chicago, in said coun-
[L. S.] ty, the day and year aforesaid.

RICH'D J. HAMILTON, *clerk.*

STATE OF ILLINOIS, *Cook county, ss:*

On the 11th day of April, 1839, the foregoing deed was left for record, and was duly recorded in book No. 3 of deed, page 74.

RICH'D J. HAMILTON, *Recorder.*

The paper referred to in the stipulation last aforesaid, marked No. 7, and filed in the office of the clerk of said court on the fifteenth day of June, A. D. 1843, is as follows, to wit:

This indenture, made this first day of November, in the year of our Lord one thousand eight hundred and thirty-eight, between Daniel S. Griswold, of the city of Baltimore, in the county of Baltimore, in the State of Maryland, and Mary S. Griswold, his wife, of the first part, and Gurden S. Hubbard, of the city of Chicago, in the county of Cook, and State of Illinois, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one hundred dollars, to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, have remised, released, sold, and conveyed, and quit-claimed, and by these presents do remise, re-

lease, sell, convey, and quit-claim, unto the said party of the second part, his heirs and assigns, forever, all the following described lot or parcel of land, situate, lying, and being, in the city of Chicago aforesaid, and known and described as lot number one, (1) in block number five, (5) in Kinzie's addition to the town of Chicago; the said lot is laid down and designated upon the original plat of said addition, on record in the recorder's office, of Cook county, aforesaid; said premises being situated in the county of Cook, and State of Illinois, and being the same that were conveyed to said Daniel S. Griswold, by Gholson Kercheval and wife, by deed dated September, 25, 1837.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever, of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second, his heirs and assigns, *and assigns*, forever. And the said party of the first part, for themselves, their heirs, executors, and administrators, do covenant and agree to and with, the said party of the second part, his heirs and assigns, that he will warrant and forever defend the aforesaid premises, to be free and clear of all claim or claims, of all and every person or persons, claiming or to claim, by, through, or under them, and none other.

In witness whereof, the said party of the first part have hereunto set their hands and seals, the day and year first above written.

D. S. GRISWOLD, [SEAL.]
MARY S. GRISWOLD. [SEAL.]

Sealed and delivered in the presence of—
WM. ECHELBERGER, of I.

STATE OF MARYLAND, *city of Baltimore:*

I, William Echelberger, notary public, within and for the city of Baltimore, and State aforesaid, do hereby certify, that on this fifth day of April, A. D. 1839, personally appeared before me, Daniel S. Griswold, and Mary his wife, who are both personally known to me, to be the real persons who executed the foregoing deed, and severally acknowledged that they executed the same, freely and voluntarily, for the uses and purposes therein expressed. She, the said Mary S., was examined by me separate and apart from her said husband, and the contents and meaning of said deed were fully explained and made known by me to her, and she acknowledged that she executed said deed, and relinquished her dower in the premises therein described, freely and voluntarily, without force or compulsion of her said husband.

[L. S.] Witness my hand and notarial seal.

WM. ECHELBERGER,
*Notary Public.*

STATE OF ILLINOIS, *Cook county, ss.*

On the 20th day of April, 1839, the foregoing deed was left for record, and duly recorded in book No. 3, deeds, page 95.

RICH'D J. HAMILTON,
*Recorder Cook co., Ill's.*

The paper referred to in the stipulation last aforesaid, marked No. 8, and filed on the twenty-third day of June, in the year of our Lord one thousand eight hundred and forty-three, is as follows, to wit:

This indenture, made this *twenty-ninth* day of August, in the year of our Lord one thousand eight hundred and thirty-eight, between *Gurdon S. Hubbard*, of the city of Chicago, in the county of Cook, and State of Illinois, *of the first part*, and *Hiram Pratt*, of the city of Buffalo, in the county of Erie, and State of *New York*, of the *second part*, *witnesseth:* whereas the said party of the first part is justly indebted to the said party of the second part in the sum of *twelve thousand and seventy-five dollars and thirty-nine cents*, secured to be paid by *ten* certain promissory notes bearing even date herewith, as will more fully appear by reference to the said notes. *Now therefore*, *this witnesseth*, that the said party of the first part, for the better securing the payment of the money aforesaid, with interest thereon according to the tenor and effect of the said notes above mentioned. *And also* in consideration of the further sum of one dollar, to him in hand paid by the said party of the second part, at the delivering of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey, unto the said party of the second part, his heirs and assigns, forever, *all of the following described tract*, *piece or parcel of land*, *to wit*, *lot number one* (1) *in block number five* (5) *in Kinzie's addition to the town of Chicago*, with the brick dwelling house, and other buildings thereon, situated and lying in the *city of Chicago*, *in the county of Cook*, *and State of Illinois* aforesaid, and being the same that were purchased by said party of the first part of one Gholson Kercheval. TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments, privileges and appurtenances thereunto belonging, or in any wise appertaining. *And also*, all the estate, interest, and claim whatever, in law as well as in equity, which the party of the first part has in and to the premises hereby conveyed unto the said party of the second part, his heirs and assigns, and their only proper use, benefit and behoof. *Provided always*, these presents are upon this expressed condition, that if the said party of the first part, his heirs, executors, administrators or assigns, shall well and truly pay, or cause to be paid, to the said party of the second part, his heirs, executors, administrators or assigns, the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above mentioned notes, according to the true intent and meaning thereof, that then and in that case these presents, and every thing herein expressed, shall be absolutely null and void.

In witness whereof, the said party of the first part hereunto set his hand and seal, the day and year first above written.

G. S. HUBBARD. [L. S.]

Sealed and delivered in the presence of—the word Illinois erased, and the word New York interlined, before signing, and also the word nine-

teenth erased and twenty-ninth interlined, in the first line, and also the word Erie written over an erasure.

J. YOUNG SCAMMON,
WM. W. SALTONSTALL.

STATE OF ILLINOIS, *Cook county, ss.*

I, F. A. Howe, a justice of the peace in and for the county of Cook, in State aforesaid, do hereby certify, that Gurdon S. Hubbard, esq., who is personally known to me as the same person whose name is subscribed the aforegoing deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said deed as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal, at my office, in the city of Chicago, in county aforesaid, this nineteenth day of August, A. D. 1838.

F. A. HOWE, *J. P.* [L. S.]

STATE OF ILLINOIS, *Cook county.*

On the 3d day of September, 1838, the foregoing mortgage was left for record, and duly recorded in book No. 1, of mortgages, page 17.

RICH'D J. HAMILTON, *Recorder.*

Sept. 3d. (4) (6427)

And now at this day, to wit, the nineteenth day of June, of the term of June, in the year of our Lord one thousand eight hundred and forty-three, came the said parties, by their solicitors, and file their stipulations and the papers referred to therein, which stipulation is in the words and figures following, viz: "It is hereby agreed between the parties to the above entitled cause, that the papers marked from one to eight, inclusive, shall be received as evidence in this case, and that the respective things therein shall be received upon the hearing of this cause, viz: 1st. The affidavit of Kercheval proving sale and delivery of possession, bond, and so forth. 2d. Affidavit of Greenwood proving same facts. 3d. Affidavit of Scammon proving possession. 4th. Deed from Kercheval to Griswold. 5th. Agreement under which deed to Griswold was executed, and affidavit of Ogden. 6th. Deed from Kercheval to Hubbard. 7th. Deed from Griswold to Hubbard. 8th. Mortgage from Hubbard to Pratt." Whereupon said cause was, upon the pleadings and evidence, brought to a hearing, and the court now here having heard the argument of counsel, and being fully advised in the premises, do order, adjudge, and decree, that the injunction herein be dissolved, and that the said complainant take nothing by his said bill, but that the same be dismissed. And it is further ordered, adjudged, and decreed, that the said defendant recover of the said complainant his costs by him herein expended, and that he have execution therefor, &c.

And thereupon the said complainant prayed an appeal from the order and decree above stated, which appeal is allowed upon condition that the said complainant file in this court, within thirty days from the date hereof, a bond executed by J. Young Scammon, in the penal sum of two thousand dollars, conditioned to prosecute the appeal with effect, and to

pay all costs and damages arising from, or accruing upon, said appeal. And it is further [?] that the complainant have leave to withdraw from the files the original exhibits by him filed as evidence, from number four to number eight, upon filing true copies thereof with the clerk.

This day, to wit, the fifteenth day of July, in the year of our Lord one thousand eight hundred and forty-three, a bond was filed in the clerk's office of said court, in the words and figures following, to wit:

"UNITED STATES OF AMERICA:

Circuit Court of the United States, for the circuit and district of Illinois.

HUGH ROSS, administrator of the estate of Hiram Pratt, deceased, complainant,
vs.
WILLIAM PRENTISS, Marshal of the District of Illinois, defendant.
} In Chancery.—Appeal.

Know all men by these presents, that I, J. Young Scammon, am held and firmly bound unto William Prentiss, aforesaid, marshal of the district of Illinois, in the penal sum of two thousand dollars, to be paid to the said William Prentiss, his executors or administrators. To which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal, and dated this fifth day of July, A. D. 1843.

Whereas, the said Hugh Ross, administrator of the estate of Hiram Pratt, deceased, hath prayed an appeal to the Supreme Court of the United States, to reverse the final decree rendered in the above entitled cause by the circuit court of the United States, for the district of Illinois, at the June term thereof, in the year of our Lord one thousand eight hundred and forty-three. And whereas, the said appeal was allowed by the judges of said court, on the nineteenth day of June aforesaid, upon said Hugh Ross, administrator and complainant as aforesaid, filing with the clerk of said circuit court within thirty days, a bond in the penal sum of two thousand dollars, made by said J. Young Scammon, conditioned as the law directs. Now, therefore, the condition of this obligation is such, that if the above named Hugh Ross, administrator as aforesaid, shall prosecute his said appeal to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. YOUNG SCAMMON. [SEAL.]

Sealed and delivered in presence of—
N. B. JUDD.

This day, to wit, the same day and year last aforesaid, an additional bond was filed in the clerk's office aforesaid, in the words and figures following, to wit:

UNITED STATES OF AMERICA:
Circuit court of the United States, for the circuit and district of Illinois.

HUGH ROSS, administrator of the estate of Hiram Pratt, deceased, complainant,
vs.
WILLIAM PRENTISS, marshal of the district of Illinois, defendant.
} In chancery.—Appeal.

Know all men by these presents, that we, Hugh Ross, administrator of the estate of Hiram Pratt, deceased, and J. Young Scammon, are held and firmly bound unto William Prentiss aforesaid, marshal of the district of Illinois, in the penal sum of two thousand dollars, to be paid to the said William Prentiss, marshal as aforesaid, his executors or administrators: to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this fifth day of July, A. D. 1843.

Whereas, the said Hugh Ross, administrator of the estate of Hiram Pratt, deceased, hath prayed an appeal to the Supreme Court of the United States, to reverse the final decree rendered in the above entitled cause by the circuit court of the United States, for the district of Illinois, at the June term thereof, in the year of our Lord one thousand eight hundred and forty-three.

And whereas, the said appeal was allowed by the judges of said court, on the nineteenth day of June aforesaid, upon said Hugh Ross, administrator and complainant as aforesaid, filing with the clerk of said circuit court, within thirty days, a bond in the penal sum of two thousand dollars, made by said J. Young Scammon, conditioned as the law directs.

Now, therefore, the condition of this obligation is such, that if the above named Hugh Ross, administrator as aforesaid, shall prosecute his said appeal to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

HUGH ROSS, [SEAL.]
J. YOUNG SCAMMON. [SEAL.]

Sealed and delivered in presence of—
N. B. JUDD.

The following are the exhibits referred to in the defendant's answer to the complainant's bill:

United States of America, Department of State, to all [to] whom these presents shall come, greeting:

I certify, that C. H. W. Wharton, whose name is subscribed to the paper hereunto annexed, is now, and was at the time of subscribing the same, a justice of the peace for the county of Washington, in the District of Columbia, duly commissioned, and that full faith and confidence are due to his acts as such.

In testimony whereof, I, John Forsyth, Secretary of State of the United States, have hereunto subscribed my name, and caused the [SEAL.] seal of the Department of State to be affixed. Done at the city of Washington, this ninth day of January, A. D. 1838, and of the independence of the United States of America the sixty-second.

JOHN FORSYTH.

*County of Washington, District of Columbia, sct:*

On this fourth day of January, in the year one thousand eight hundred and thirty-eight, personally appeared before me, the subscriber, a justice of the peace for said county, John Barcroft, who being duly affirmed, deposeth and saith, that he is a clerk in the Post Office Department, and is employed in registering, in a book kept for that purpose, the bonds taken of postmasters for the faithful performance of their official duties; that he has this day examined said book, and finds, from an entry made therein, that John S. C. Hogan, who was appointed postmaster at Chicago, in the county of Cook, and State of Illinois, on the third day of November, 1832, executed and delivered to the Postmaster General a bond, with Thomas J. V. Owen and Gho. Kercheval, his sureties, dated the twenty-eighth day of November, 1832, in the penal sum of six hundred dollars, conditioned that he, the said John S. C. Hogan, would well and truly execute the duties of the said office, and faithfully, once in three months, and oftener if thereto required, render accounts of his receipts and expenditures, as postmaster, to the General Post Office, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters, and would pay all moneys that should come to his hands, for the postage of whatever is by law chargeable with postage, to the Postmaster General of the United States for the time being, deducting only the commission and allowances made by law, for his care, trouble, and charges in managing said office; and would also faithfully do and perform, as agent for the General Post Office, all such acts and things as might be required of him by the Postmaster General; and, moreover, would faithfully account, with the said Postmaster General, for all moneys, bills, bonds, notes, receipts, and other vouchers which he, as agent as aforesaid, should receive for the use and benefit of said General Post Office.

And deponent further saith, that nearly all the bonds of postmasters, among the files of the appointment office of the Post Office Department, were destroyed, on the morning of the fifteenth day of December, eighteen hundred and thirty-six, by the fire which consumed the building in which said Department was kept, and that he has every reason to think, and verily believes, that the bond of John S. C. Hogan was among said bonds, and was destroyed at the time, and in the manner aforesaid.

Affirmed before me—

C. H. WHARTON,

*Justice of the peace for the county aforesaid.*

*John S. C. Hogan, late postmaster at Chicago, Illinois, in account with the United States.*

| | | |
|---|---|---|
| | Dr. | |
| To balance due on his quarterly returns as postmaster, viz: | | |
| From October 1 to December 1, 1832 | | $80 06 |
| " January 1 to April 1, 1833 | | 120 82 |
| " April 1 to July 1, 1833 | | 152 54 |
| " July 1 to October 1, 1833 | | 212 81 |
| " October 1 to December 31st, 1833 | | 262 75 |
| " January 1 to April 1, 1834 | | 274 07 |
| " April 1 to July 1, 1834 | | 345 01 |
| " July 1 to October 1, 1834 | | 471 43 |
| " October 1 to December 31st, 1834 | | 423 34 |
| " January 1 to April 1, 1835 | | 477 48 |
| " April 1 to July 1, 1835 | | 694 81 |
| " July 1 to September 30, 1835 | | 828 45 |
| " October 1 to December 31, 1835 | | 828 73 |
| " January 1 to March 31, 1836 | | 1,004 99 |
| " April 1 to June 30, 1836 | | 1,286 49 |
| " July 1 to September 30, 1836 | | 1,591 45 |
| " October 1 to December 31, 1836 | | 1,621 31 |
| " January 1 to March 31, 1837 | | 1,742 70 |
| | | 12,419 24 |
| To balance | | $2,096 38 |

| | | | |
|---|---|---|---|
| 1833. | | Cr. | |
| April 1 | T'y draft in favor | Oliver & McDonald | $15 00 |
| July 1 | " do | Asahel Savery | 150 00 |
| Oct. 1 | " do | Robert Oliver | 50 00 |
| Oct. 1 | " do | Asahel Savery | 250 00 |
| 1834. | | | |
| April 1 | " do | ditto | 175 00 |
| April 1 | " do | John T. Temple | 380 00 |
| May 23 | " do | Robert Oliver | 61 00 |
| July 1 | " do | John T. Temple | 250 00 |
| Oct. 1 | " do | ditto | 300 00 |
| 1835. | | | |
| Jan. 1 | " do | Asahel Savery | 240 00 |
| Jan. 1 | " do | John D. Waiters | 200 00 |
| Feb. 19 | " this sum paid | R. E. Heacock, carry'g mail | 11 00 |
| April 1 | " draft in favor | Asahel Savery | 500 00 |
| April 1 | " do | P. B. Guignon | 200 00 |
| July 1 | " do | ditto | 100 00 |

ACCOUNT—Continued.

| 1835. | | Cr. | |
|---|---|---|---|
| July 1 | By draft in favor Asahel Savery | - - | $350 00 |
| Dec. 10 | This sum. paid for 1 pair mail bags | - - | 12 50 |
| 1836. | | | |
| Jan. 6 | " " P. B. Guignon | - - | 372 50 |
| Mar. 12 | " " repairing mail bags | - - | 1 68 |
| Mar. 31 | T'y draft in favor Winters & Philleo | - - | 201 10 |
| April 4 | " do P. B. Guignon | - - | 85 58 |
| April 4 | This sum paid ditto | - - - | 372 50 |
| April 30 | " " - - - | - - | 372 50 |
| Aug. 25 | T'y draft in favor ditto | - - | 372 50 |
| Aug. 26 | " do Winters & Philleo | - - | 300 00 |
| 1837. | | | |
| April 5 | By cash - - - - | - | 5,000 00 |
| | Balance - - - - | - | 2,096 38 |
| | | | $12,419 24 |

AUDITOR'S OFFICE, *Post Office Department.*

I certify that the foregoing is a true statement of the account of John S. C. Hogan, late postmaster at Chicago, Illinois, as audited and adjusted at this office.

In testimony whereof, I have hereunto subscribed my name, and caused to be affixed the seal of my office, this third day of January, one thousand eight hundred and thirty-eight.

[SEAL.]

C. K. GARDNER,
*Aud. of the T'y for the P. O. Dept.*

I certify that the foregoing account is a true and correct copy of the original from the Post Office Department, now on file in my office.

JAMES F. OWINGS,
*Clerk district court dist. of Illinois.*

I, James F. Owings, clerk of the circuit court of the United States for the district of Illinois, do certify the foregoing to be true and correct copies of the complainant's bill of injunction, order granting writ of injunction, bond for the payment of costs, writ of injunction, defendant's answer to bill, complainant's replication, two stipulations, paper marked from 1 to 8, order of court, bonds of J. Young Scammon, Hugh Ross and J. Young Scammon, together with the exhibits referred to in the defendant's answer to complainant's bill, as the same appear of file and of record in said office, in the case of Hugh Ross, administrator of Hiram Pratt, against William Prentiss, marshal for the district of Illinois.